

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Jose A. Cruz-Kerkado, Phoenix Military Institute, Corp., and Centro de Adiestramientos Tácticos de Puerto Rico Corp., Damas de la Segunda Enmienda, Corp. a/k/a Ladies of the Second Amendment and Gun Rights and Safety Association of Puerto Rico, Inc. a/k/a Puerto Rico NRA

State Association

Plaintiffs

v.

Commonwealth of Puerto Rico (by way of the Puerto Rico Department of Justice a/k/a *Departamento de Justicia*), Puerto Rico Police Department a/k/a *Policea de Puerto Rico*, Puerto Rico Department of Leisure and Sports a/k/a *Depatamento de Recreación y Deporte*, and the Puerto Rico Shooting Association a/k/a *Federación de Tiro de Armas Cortas y Rifles de Puerto Rico*

Defendants

CIVIL ACTION

Case No 3:16-cv-2748

**Declaratory
And Injunctive Relief**

Constitutional Rights

**STATEMENT OF UNCONTESTED FACTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

COMES NOW plaintiffs through the undersigned attorney, and respectfully submit this

Statement of Uncontested Facts in Support of its Motion for Summary Judgment *for the plaintiffs*:

1. Plaintiff Jose A. Cruz Kerkado is a retired U.S. Army Veteran.

Amended Complaint (Dkt. No. 29) Pg. 1, ¶1

2. Cruz-Kerkado possess a Puerto Rico Weapon's License.

Amended Complaint (Dkt. No. 29) Pg. 1, ¶1

3. Cruz-Kerkado teaches firearm safety and self-defense.

Amended Complaint (Dkt. No. 29) Pg. 4, ¶14

4. Cruz-Kerkado does not want to associate, financially support or affiliate with a paid membership to the Puerto Rico Shooting Association. Nor any of its affiliated Gun Clubs.

Amended Complaint (Dkt. No. 29) Pg. 1, ¶1 / Kerkado's Statement Pg. 3, ¶8

5. Puerto Rico Weapons Act *only* allow Puerto Rico Shooting Association gun-clubs.

Amended Complaint (Dkt. No. 29) Pg. 2, ¶1

6. Puerto Rico Weapons Act and Administrative Regulation *requires* licensee to pay for a Puerto Rico Shooting Association Federation Stamp as part of license's renewal process.

Amended Complaint (Dkt. No. 29) Pg. 2, ¶1

7. Phoenix Military Institute, Corp. is a non-stock corporation registered with the Commonwealth of Puerto Rico Department of State, Registration No. 44654. It conducts self-defense education and firearm safety training that doesn't conform with the Puerto Rico Shooting Association athletic/sport *standards*.

Amended Complaint (Dkt. No. 29) Pg. 2, ¶2

8. Centro de Adiestramientos Taticos de Puerto Rico Corp. a/k/a CAT is non-stock corporation registered with the Commonwealth of Puerto Rico Department of State, Registration No. 353218. CAT's proposed training facility was rejected by Puerto Rico Shooting Association.

Amended Complaint (Dkt. No. 29) Pg. 2, ¶3

9. *Without* Puerto Rico Shooting Association endorsement *no one*, including CAT, can obtain a permit from the Commonwealth to operate firearm training facility unrelated to sports.

Amended Complaint (Dkt. No. 29) Pg. 2, ¶3 / Kerkado's Statement Pg. 3, ¶9

10. "Damas de la Segunda Enmienda, Corp." a/k/a Ladies of the Second Amendment and Gun Rights and Safety Association of Puerto Rico, Inc. a/k/a Puerto Rico

NRA State Association, are organizations whose members are similarly situated to Cruz-Kerkado and whose individual members interests fall within zone of interests the Amended Complaint seeks to protect.

Amended Complaint (Dkt. No. 29) Pg. 2, ¶4

11. Puerto Rico Police Department a/k/a Policia de Puerto Rico (“Police”) is responsible for approving and issuing Puerto Rico Weapon Licenses and Gun-range license pursuant to Puerto Rico’s Weapons Act, and its administrative regulation.

Amended Complaint (Dkt. No. 29) Pg. 3, ¶6

12. Defendant Puerto Rico Department of Leisure and Sports a/k/a Departamento de Recreacion y Deportes (“Sports”) is responsible for certification of gun-range facilities on the Island. It issues certification to facilities, pursuant to Puerto Rico’s Weapons Act.

Amended Complaint (Dkt. No. 29) Pg. 3, ¶7

13. Sports also refused to renew Phoenix shooting instructor’s Sports certifications. Amended Complaint (Dkt. No. 29) Pg. 3, ¶7 / Kerkado’s Statement Pg. 7, ¶29
14. Puerto Rico Shooting Association a/k/a Federacion de Tiro de Armas Cortas y Rifles de Puerto Rico *requires* affiliation for the approval of proposed gun-range facilities.

Amended Complaint (Dkt. No. 29) Pg. 3, ¶8 / Kerkado’s Statement Pg. 3, ¶9

15. Membership and oath of loyalty into said federation (PRSA) by gun-clubs is prerequisite for Sports and the Police approval for anyone who wants to operate a gun-range.

Amended Complaint (Dkt. No. 29) Pg. 3, ¶8 / Kerkado's Statement Pg. 3, ¶8

16. The federation generates funds from mandatory fees imposed on individual weapon licensees with target-shooting permits.

Amended Complaint (Dkt. No. 29) Pg. 3, ¶8 / Kerkado's Statement Pg. 3, ¶8

17. The Puerto Rico Shooting Association *excluded* Phoenix and CAT because they deviate from federation's athletics target-practice standards.

Amended Complaint (Dkt. No. 29) Pg. 3, ¶8

18. On August 18, 2016, the PRSH sent a letter to Phoenix rejecting its application.

Amended Complaint (Dkt. No. 29) Pg. 5, ¶17

19. Without PRSA endorsement and certificate of affiliation Phoenix's training facility can't be used for firearm education.

Kerkado's Statement Pg. 3, ¶9

20. Phoenix previously tried to comply with affiliation requirement, by registering a Puerto Rico Tactical Shooting Association, and was initially "certified" as a bona fide organization by the Sports Department in 2015, and Phoenix instructors were issued licensed by Sports. These were later cancelled and/or denied in 2016. The shooting instructor's license was denied by Sports.

Amended Complaint (Dkt. No. 29) Pg. 6, ¶17 / Kerkado's Statement Pg. 2, ¶4

21. The PRSHA sought to prohibit Kerkado and Phoenix from engaging in training, by requesting *in writing* that all gun-clubs refrain from allowing Phoenix to use their facilities.

Amended Complaint (Dkt. No. 29) Pg. 6, ¶17

22. Puerto Rico Shooting Association's Constitution preamble mandates that it represents a Sport and is organized under covenants of the Puerto Rico Olympic Committee.

Amended Complaint (Dkt. No. 29) Pg. 6, ¶18

23. Said Constitution's Article 601 lists among its sources of income (A) fees paid for by gun-clubs *and* target practice permit holders.

Amended Complaint (Dkt. No. 29) Pg. 6, ¶18

24. The PRSA federation's membership regulation for gun-clubs Article 301 (A) requires prospective applicants for its endorsement to swear allegiance to the federation. Article 304 requires each club to pay an annual fee of \$25.00 and each individual target-shooting permit holder to pay a fee of \$12.00 every 3 years.

Amended Complaint (Dkt. No. 29) Pg. 6, ¶18

25. Sport's Regulation 2068, titled "Target Shooting Rules of Puerto Rico", Article II indicates it seeks to "...promote and encourage the development of the sport of target shooting..." As a prerequisite for gun-clubs, such as CAT, to exist, Article V (I) (g) mandates that "A certificate of membership in the association or shooting federation." is required. Membership is also compelled by Sports.

Amended Complaint (Dkt. No. 29) Pg. 6, ¶18

26. The mandatory Internal Revenue Stamp Tax (\$250.00) paid to Puerto Rico Police by everyone, including plaintiffs' students and members, to proceed with the State Court Conceal Carry application process, is received by Police and not the State Court which is by law, the ultimate decision maker for approval of a Conceal Carry permit in the Commonwealth.

Amended Complaint (Dkt. No. 29) Pg. 8, ¶22

27. Police receives the \$250.00 Internal Revenue Stamp Tax paid by Conceal Carry permit applicants. Police is not a party to, does not participate nor appear at the Court Hearing for the concealed carry permit.

Amended Complaint (Dkt. No. 29) Pg. 8, ¶22

Plaintiffs hereby reserve the right to amend, correct, modify and/or supplement the above referenced list of uncontested facts, pending the outcome of discovery responses/depositions, etc.

Plaintiffs respectfully ask the Court to grant Summary Judgment *for the plaintiffs*.

Respectfully submitted.

In San Juan, Puerto Rico, this 27th day of October 2017.

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to parties by operation of the Court's electronic filing system. Parties may access the filing through Court's system.

Respectfully submitted,

/S/ Humberto Cobo-Estrella, Esq.
Humberto Cobo-Estrella, Esq.
USDC-PR230108
PO Box 366451
San Juan, Puerto Rico 00936-6451
Tel. (787) 529-7140
Email: hcobo@hcounsel.com